

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 40272 of 2021

Duryodhan Sahu and another ***Petitioners***
Mr. Sukanta Kumar Dalai, Advocate

-versus-

State of Odisha and others ***Opp. Parties***
Mr. Swayambhu Mishra,
Additional Standing Counsel
(For Opposite Party Nos. 1 to 5)

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
31.03.2022

Order No.

4. 1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition prays for the following reliefs:-

*“(i) the writ of mandamus shall not be given to opposite parties more especially opposite party No-2 to 6 be restrained from doing construction over the Village Danda to secure ends of justice;
(ii) the action of the Opposite Parties in not considering the representation of the petitioners shall not be declared as illegal arbitrary and mala fide so also contrary to the prevailing law;
(iii) An such other appropriate order/orders, direction/directions shall not be passed in the facts and circumstances of the case.”*

3. Grievance of the Petitioner in this writ petition is that Block Development Officer, Ganjam-Opposite Party No.3 is undertaking construction of a community hall over village ‘Danda’ of Podagada Jhatipadar village under Ramgada Gramapanchayat under Ganjam tahasil in the district of Ganjam. The main contention of Mr. Dalai, learned counsel for

the Petitioners is that no construction should be made over village 'Danda' obstructing free flow of traffic and communication. As the village is close to the coast, it is prone to flood and cyclone. Hence, the village 'Danda' should be kept encroachment free for uninterrupted access of the vehicles, more particularly in emergency. In spite of serious objection of the Petitioners, Tahasildar, Ganjam as well as Block Development Officer, Ganjam turned deaf ear to the same and proceeded with the construction. Thus, finding no other alternative, the Petitioners filed the present writ petition.

4. Taking into consideration the nature of allegations made in the writ petition, this Court directed the learned State Counsel to take instruction in the matter. Several adjournments were taken by learned counsel for the State to take instruction, as it was not timely provided by the concerned Officers. However, in course of hearing, Mr. Mishra, learned ASC received written instruction dated 28th March, 2022 from Tahasildar, Ganjam-Opposite Party No.4, copy of which is produced in Court. Relevant portion of the said written instruction is quoted hereunder:-

"The case land is recorded in Govt. Sarvasadharana Khata in kissam Gharabari with brief description as KOTHAGHARA (ROR of the land enclosed as annexure A/1). The villagers of the village Podagada Jhatipadar decided to construct a community hall over its previous location as the land was (sic) reserved for the purpose. Further, the petitioners of this case submitted their objection before Tahasildar, Ganjam. On the application of the petitioners the Tahasildar and the Block Development Officer called a meeting to discuss and resolve the issue, where the petitioners are not present but the villagers present in the meeting. Decision taken in the meeting to leave (sic) a 12 feet road and to leave (sic) the ground floor free for (sic) convenience of the

petitioners/villagers (Meeting proceeding enclosed as annexure A/2). At present, the construction work has been stopped."

5. Mr. Dalai, learned counsel for the Petitioners also went through the written instruction in Court. From the above, it appears that the community hall is being constructed at the request of the villagers of Podagada Jhatipadar village. It also appears that the grievance of the Petitioners was under construction of Tahasildar, Ganjam as well as BDO, Ganjam. They had, in fact, convened a meeting to resolve the issue. But in absence of the Petitioners, a decision has been taken to leave 12 feet road at the ground floor of the building for convenience of the Petitioners/villagers. Mr. Dalai, learned counsel for the Petitioners submits that the Petitioners are being compelled to find out a site for construction of the community hall on payment of 70% of the cost of said site.

6. Taking into consideration the facts and circumstances of the case, this Court feels that a decision for construction of the community hall in village Podagada Jhatipadar should be taken in presence of the villagers as well as Petitioners.

7. In that view of the matter, this Court disposes of the writ petition with a direction that the Petitioners shall appear before the BDO, Ganjam-Opposite Party No.3 on 18th April, 2022 along with a copy of this order to receive further instruction in the matter. On receipt of the order, BDO, Ganjam shall convene a meeting in presence of Tahasildar, Ganjam to take a decision on the allegations of the Petitioners giving notice to the Petitioners and the villagers or their representative to be present in the said meeting. Since no construction work is being

undertaken at present, as indicated by the Tahasildar, Ganjam in his written instruction, this Court directs that till a decision is taken on the allegation of the Petitioners no construction of community hall shall be made over the site selected. The decision so taken shall be communicated to the Petitioners forthwith.

8. A copy of this order shall be handed over to Mr. Mishra, learned ASC for communication and compliance.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge



s.s.satapathy